A TREATISE ON JIHAD,

(IQTISAD-FI-MASAIL-IL-JIHAD),

BY

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THIS TREATISE

IS RESPECTFULLY DEDICATED

WITH PERMISSION,

To the Hon'ble James Broadwood Lyall, Esq., C. S.,

Lieut.-Govr. of the Panjab and its Dependencies,

BY THE AUTHOR

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ERRATA.

Page 6	... End of para I	... For	"Nisaw" read "Nisa"
„ 8	... Line 16	... „	"Isain" read "Isam"
„ „	... „ 17	... Read	"into" before "a battle"
„ „	... „ 18	... Omit	"into" after "saw"
„ 10	... „ 9	... Read	"Silm" for "Salam"
„ 11	... „ 37	... „	"p. 223 vol. 6" before "etc" in the next line.
„ „	... „ 44	... Read	"Silm" for "Salam"
„ 12	... „ 16	... „	"All our arguments." for "our argument"; and omit the last part of the sentence.
„ 13	... End of para II.	... „	"Bukhari, p. 315"
„ „	... Lines 2-3 of para III.	... Omit	"Bukhari, p. 315"
„ 14	... End of para II. ...	... Read	"p. 6" for 17th "Chap. Nisaa"
„ „	... 3rd line, para III.	... „	"Mecca" for "Palestine"
„ „	... 6 „ „ ...	... „	"Chap Anfal" after "league"
„ „	... 18 „ „ ...	... „	"Vol. 2" for "Vol. 3"
„ „	... 21 „ „ ...	... „	"p. 23" for "p. 33"
„ 16	... 3 „ „ ...	... Omit	"the" after why
„ 18	... Line 18	... Read	"it" before till
„ 19	... „ 31	... „	"fulfil" for "make"
„ 26	... „ 29	... „	"vast" „ "past"
„ „	... „ 38	... Omit	"the" after regarding
„ 28	... „ 15	... Read	"is" for "in"
„ 29	... „ 18	... „	"narrates" „ "narrate"
„ 30	... „ 8	... „	"says the Qazi" "for saying of Qazi"

In the name of God the all compassionate and the especially merciful to believers.

Praise be to God, the guide of him who accepts His guidance, and the saviour of him who fears Him, and Blessing and Peace upon his Prophet whom God has specially designated for the only and easy religion from amongst all the prophets, and Peace upon his family and companions through whom He has carried out his commandments.

The present treatise on the question of Jihad has been compiled for two reasons. My first object is that the Mohammedans ignorant of the texts bearing on Jihad and the conditions of Islam may become acquainted with them, and that they may not labour under the misapprehension that it is their religious duty to wage war against another people solely because that people is opposed to Islam. Thus they, by ascertaining the fixed conditions and texts, may be saved for ever from rebellion, and may not sacrifice their lives and property fruitlessly nor unjustly shed the blood of others. My second object is that non-Mohammedans and the Government under whose protection the Mohammedans live, may not suspect Mohammedans, of thinking that it is lawful for us to fight against non-Mohammedans or that it is our duty to interfere with the life and property of others, or that we are bound to convert others forcibly to Mohammedanism, or to spread Islam by means of the sword. The result of these two aims will, I hope, be that the bonds of concord will be drawn closer between the rulers and the ruled, and between British subjects generally and Mohammedans, so that peace and security may be established for ever in this country. I had compiled this treatise in the year 1876 during the Lieutenant-Governorship of Sir Henry Davies, and in order to obtain for it the approval of the learned men of the Mohammedan religion, I travelled from Lahore to Azimabad (Patna). I read out this treatise word for word to the learned of the various sects of Islam, and have obtained their concurrence in its teachings, whilst, as regards those towns of Hindustan and the Punjab to which I could not go in person, I circulated copies of this treatise to them and there also obtained the approval of the religious leaders. Then again in 1879, I circulated the substance of these texts in an appendix No. 11 to the second volume of the "Ishat-us-Sunnat," for the

information of the public generally under the head of "Istishhad," and thus I have given the public every opportunity for expressing their opinion. Thus the concurrence of the general public and of the specially learned was obtained from many centres which this appendix reached, and a general desire was expressed that the treatise should be published; but in order to increase this desire and to cause discussions of the texts I delayed publication. Indeed I waited for this purpose till Sir Charles Aitchison came into power, when I had the honor to submit to him those parts of the present treatise which were published in the Ishat-us-Sunnat; and they obtained his approval. In No. 12, volume 9, of that publication, I published this good news, expressing my thanks. In the meanwhile, the desire of my co-religionists for the publication of the whole treatise increased, so that I could delay it no longer.

An introduction is now necessary before we refer to the conditions and texts of Jihad.

INTRODUCTION.

Jihad, which is considered by the Mohammedans to be the mainstay of Islam is of two kinds, Political and Religious. Political* Jihad, which one may call "war," is based on principles and objects which are similar to those of every potentate or nation or Government, namely, a desire for ascendancy and for the subjection of others and for establishing the safety and peace of one's own subjects. In such a Jihad or war, Religion has no part whatever. Whenever a Mohammedan race possessing power has recalcitrant subjects or disobedient allies, whether Mohammedans or not, war may take place, just as every nation may wage war, that has power and seeks to establish its national influence and rule. This kind of Jihad may be called Political War. These principles are alike among all nations; with this special difference among Mohammedans, that like many other things such as eating and drinking, buying and selling, it may be invested with a religious sanction and may become a cause of "righteousness."

The object of a Religious Jihad, is the protection and safety of the Mohammedan religion and the prevention of opponents of Islam from doing injury generally to the faith. It is waged against those opponents of Islam who oppress the Mohammedan religion and the Mohammedans merely because they are Mohammedans. In such a Jihad the only object is the protection of one's own religion and co-religionists, and not the oppression of another religion, or the punishment of aliens to Mohammedanism by plunder and murder.

If any of the conditions laid down for either kind of Jihad are ignored, then, whether for Political or Religious puposes, it ceases to be a Jihad and is called "disturbance" or "rebellion." We do not consider it necessary to give details of what constitutes the conditions of a Political Jihad. Suffice it for our purpose to lay down those of a Religious Jihad with its doctrines and conditions, because it is with regard to the latter, that ignorant Mohammedans act in opposition to the religious doctrines of Islam and lead other nations to misunderstand the principles of Mohammedanism and of its followers.

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* Political War is that Jihad which has conquest for its object and has nothing to do with a Religious War. It is waged against Mohammedan and Non-Mohammedan opponents alike. A Religious Jihad is one in which the object is the preservation of the Mohammedan religion and is undertaken against those people who oppress the Mohammedan religion and injure Mohammedans.

First Proposition or Point of Law.

The real object of the Creator in forming the world and sending prophets to his creatures is not a Religious Jihad, but that they may worship and remember Him. Jihad, no doubt, may become one of the means for maintaining such worship and remembrance. The Almighty has said :—

"I have not created men and genii for any other purpose but that they should worship me." (*Koran*—Chap. Zariat). Again it is said that he had given no order to them, except that "they should worship Him and offer up prayers and give alms" (*Koran*—Chap. Bayyanah).

Again :—"He creates or kills you so that the good among you may become known" (*Koran*—Chap. Mulk).

The Prophet has explained this to mean that of all acts worship is the highest. Ibn-i-Masud asked him :—"which is the act that God loves most?" He replied,

"Prayer at the regular times, and grateful acts to parents, and thirdly, Jihad in the path of God" (Mishkát page 50).*

Abu Darda relates that the Prophet said :—"Shall I tell you what is the best act, the one purest in the sight of God, higher than all rank, nobler than spending one's silver and gold in acts of charity and fighting the enemy, so as to even cut him down to the girdle, dying one's self in the strife?"

The people answered :—"What is it?" And the Prophet replied, "It is the remembrance of God" (Mishkát, page 190).

Abu Said Khudri relates that some one asked the Prophet who did the noblest and best deed. He replied, "Those who remember God." The questioner rejoined, "Are they better than those who fight in the path of God?"

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* Dr. Leitner's note—Advice given to a militant Church in its struggle against oppressors assumes a different complexion from advice tendered in times of peace."

He answered :—"It is nobler to remember God than to break one's sword and be bathed in blood, fighting idolaters" (saving the exceptional condition justifying such an emergency, to be explained hereafter.) (Mishkát, page 190).

The Prophet asked Muaz: "Do you know God's claim on his creatures and the creature's claim on God? What is it?" He replied—"God's claim on his subjects is that they worship Him and associate no other God with him, as idolaters do; and the claim of the creatures on their God is that he shall not in that case send them to perdition." (Mishkát, page 6). Abu Huraira relates that the Prophet said :—"Whoever believes in God and the Prophet, performs his daily prayers, and keeps fasts, has a claim on the Deity to be admitted into Paradise whether he has fought in the path of God or has remained in the place where he was born." The people said: "May we give this good news (gospel) to other people?" (Mishkát, pages 32, 21).

He replied: "there are a hundred grades in Paradise for those engaged in Jihad and they will get these places."

This last sentence, reported according to Abu Huraira, which contains good tidings for those engaged in Jihad, and also the traditions which represent Jihad as an act of virtue and threaten punishment for those who abandon a Jihad, do not in the least conflict with our first text, because it applies to the condition where the worship and recollection of God by Mohammedans is impeded, and there arises a necessity for a special effort (Jihad)—a point which we hope to show more fully in our second Proposition.

Deduction from the First Proposition.

It is clearly established from the first proposition that the perfection of the Mohammedan faith and the salvation of Mohammedans is neither dependent on, nor limited to, Jihad; provided there be no obstacle in the performance of their religious duties. Salvation and perfection of the faith simply depend on worship: therefore, the belief of other nations, that every orthodox and true Mohammedan should be eager to wage Jihad with the opponents of his religion is an error and mere calumny founded on ignorance of the Mohammedan religion.

Second Proposition.

The object of a Religious Jihad is not to punish Káfirs * for their Kufr in this world or to convert them forcibly to Mohammedanism: its object, as inferred from the word of God and of his Prophet, is to save †Mohammedans from the oppression† of their opponents and to facilitate the original object of the creation of man and the sending of apostles, namely, worship of the true God and to remove those who obstruct that path. The Almighty has said, "fight with those in the path of God who fight with you and do not go beyond this;" "God is not the friend of those who go beyond limits" (*Koran*—Chap. Baqar). And the Koran refers to the nation of Samuel when they said: "why should we not fight in the path of God since we have been deprived of our homes and children," (*Koran*—Chap. Baqar). In regard to the Mohammedans, God said: "How is it that you are not fighting in the path of God on behalf of the helpless and the children, who pray to the Almighty to rescue them from the dwellings of tyrants?" (*Koran*—Chap. Nisaw).

The Almighty also said: "the infidels desire that you should become infidels like themselves, (*Koran*—Chap. Nisaw). So that there may be unanimity in religion, do not make friends with them till they, in the path of God, leave the country; seize these people (namely your ill-wishers) if they oppose you, and, wherever you find them, kill them; accept no friendship or help from any one of them except from such as join those in treaty or agreement with you or such as join those who want to fight with neither you nor your enemies. Had God pleased he would have given them power against you and they would have made war upon you, but if they depart from you and wage not war against you and offer you peace, then God alloweth you no occasion to fight against them."

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1. * Káfir means one who does not believe, and can be applied by every person to those who profess a different religion. Thus a Mohammedan calls himself a Káfir so far as other religions are concerned. Indeed, the word is used in that sense in the Koran itself.

The word Káfir is not used to signify an infidel; it simply means a non-Mohammedan. Literally Káfir means "covered," "ignorant," "unbelieving" because in darkness and not knowing.

2. † The Fateh-ul-Qadir comment on the Hidaya also states that the object of Jihad is not only to test his creatures but also to give glory to Islam and prevent Mohammedans from being oppressed by non-believers. This argument is strengthened by the injunction of the Almighty—"fight so that the Mohammedans may not be oppressed and the religion be God's," *i. e.*, untouched by idolatrous influences.

Again, "if you do not fight with oppressors, there will be great rebellion and disturbance in the world." God prevents the oppression of Mohammedans; he loves not the ungrateful and the treacherous. Therefore he has given permission to the oppressed to fight the tyrants who oppose them. God is strong to help them; and also those who have been unjustly expelled from their homes only because they said that "our Lord is God." If God were not to save one people from another, the Mosques, Churches, and Synagogues in which God's name is taken, would all be destroyed." (*Koran*—Chap. al Haj).

God has also said in praise of his good servants that "if any one attacks them, they retaliate, but not more than is necessary for the evil inflicted, but if they forgive then their reward will be great with God, (*Koran*—Chap. Shura). "God is not pleased with oppressors; God does not prevent your intercourse and kindly offices with those who do not fight you because of your religion or who have not expelled you from your homes. God is a friend of the just. God prevents you from being the friends and associates of those who fight you by reason of your religion or who have assisted your enemies in this respect and he who makes those his friends is himself an oppressor," (*Koran*—Chap. Mumtahina).

From these verses of the Koran it is shown that the object of Jihad is the free exercise of the worship of God in which others may hinder the Mohammedans and that the attack it specially allows is upon those people who molest Mohammedans for the purpose of suppressing their religion. This matter the prophet has further elucidated, and he has exempted those Káfirs from religious Jihad and destruction of whom there is no fear that they will fight with Mohammedans or suppress their religion. Among these are the women, who are not participators or helpers in such work, and the aged who cannot fight; the residents in churches or monasteries are similarly exempted, as they have to attend to their vocations and not to a Religious War; similarly labourers whose only concern is for their wages and not for "Kufr" or "Islam," and also, boys who are not fit for war, although they may be professing "Kufr." Riyah, one of the companions of the Prophet, relates that the Prophet in a war came across a dead woman and said: "How is this, for she has not fought?" In that war the commander was Khalid-ibn-i-Walid. The Prophet ordered that he should not kill any woman or labourer. The same

Arrogites

story is related by Ibn-i-Omar, the son of the Khalifa; and it is related by Anas, one of the companions, that the prophet said: "do not kill the very aged or tender boys or women;" (Abudaud p. 351, vol. I). This order was impressed on every Commanding Officer when he sent him to war. *Buraidah* one of the great companions, relates that the Prophet ordered him not to strike children, (Muslim, p. 82, vol 2). And according to Ibn-i-Abbás the Prophet said "do not strike children nor those who belong to churches or monasteries," (Imam Ahmad). And it is owing to this reason that whenever the prophet attacked any party, he used to wait till morning, for if he heard the Azan (call) of the morning prayer, he would not attack them. Anas relates that the Prophet, (may the peace of God be on him) said this, (Bukhari p. 86,) and Isain Mozani has related that he was once sent by the Prophet a battle, and he too was warned by the Prophet that wherever he saw into any mosque or heard the sound of a call to prayer, he should not fight any body or kill any one, (Abudaud, p. 353,) that is to say, that if non-believers lived there the general should not kill them, because when they did not prevent the Mohammedans from building mosques and repeating the call to prayers they were not lawfully liable to Jihad. From these words of the Prophet, the meanings of the above mentioned verses of the *Koran* have become fully clear, and it has been proved that the Religious War by Mohammedans against non-believers, is only for removing religious obstacles and not for punishing the non-Mohammedans for their not believing. For if such were the case, the order for fighting and assassinating the non-believers would not be confined to those non-believers who fight. Indeed all non-believers (old men, females, slaves, grown-up boys, coolies, and those who are not able to fight, or those who raise no objection to the building of mosques, and saying of Azáns) and especially residents of churches who are the leading members of the Christain faith would have been ordered to be killed.

Now we turn to proofs to show that a war is not made in order to force the non-believers to accept Islam and to spread it by force. For this purpose the following texts

* From this it is clear that the object of a Religious War is not only the protection of the Mohammedan religion and their places of worship but also the protection of Christian Churches and Jewish Synogogues. The Jews also waged a Religious War for this purpose. The Christians also took part in the Crusade to save Jerusalem. In short Jihad or Religious War is waged not only by Christians and Jews but also by Mohammedans.

are sufficient. God the most high says:—"Wilt thou therefore, forcibly compel men to be true believers?" *Koran*—(Chap. Yoonas). Also—"let there be no violence in religion. Here is right direction clearly distinguished from wrong." (*Koran*—Chap. Baqar). Anas has related as to the cause of the delivery of the above-mentioned verses—that among the Ansárs if any woman happened to be childless, she vowed that any child that might be born to her, and grow up, should be educated to *Judaism*. But when the prophet wanted to exile from the confines of Medina, the Jews of Bani Nazir who constantly gave him trouble, there arose a quarrel about those children between the Jews and the Ansárs, the parents of those children. The Ansárs claimed the children as being their offspring. Thereupon the above-mentioned verse came from God.

The above is related by Abudáúd. It is said in the *Tafsir-i-Moalam*, that the Prophet decided the case, saying that the boys had their own choice; if they liked the Ansárs they were to belong to them (Mohammedans), and if they liked the Jews, they must go with them into exile. From this account it is clearly proved that God does not wish to force any one to embrace Islam. Further proofs of these questions will be mentioned when we discuss the next question.

The conclusion of the second question, and the verse of the Koran, and the traditions quoted therein clearly show:—First that the suspicion of other nations regarding *Islam*, that it teaches to fight only for the reason of religious disdain and wishes to bring other nations forcibly into subjection and obedience, and to spread the Mohammedan religion, is wrong and based on ignorance. Secondly, that in the same manner the fighting of some ignorant Mohammedans with other nations only because of religious difference and interfering with their lives and property (as is the custom of ignorant frontier Mohammedans) is based on ignorance and mistake. Thirdly, that religious war against those nations which deprecate interference in religion and do not like it either from the dictates of their own faith or reason, or for political purposes (as is the case with the British Government), is never allowable.

The Third Proposition.

The city or country wherein Mohammedans are freely allowed to perform their religious duties is not called *Dar-ul-Harab*. If that place be actually the

kingdom of Mohammedans, and other nations have conquered it (as India), then as long as these enjoy liberty to perform their religious duties therein, it is called the *Dar-ul-Islam* in virtue of its being originally a *Dar-ul-Islam*; and if it has ever been in the possession and under the government of any other nation, and Mohammedans are allowed by them to perform their religious duties, then also it is *Dar-ul-Islam*: or at least it may be called *Darus-Salam-wal-Aman* (place of safety). In both these cases Mohammedans are not allowed to wage war against them, or to regard any war as a religious war; and those Mohammedans who live in safety in such a city or country are not bound to emigrate from these countries and flee to any other *Dar-ul-Islam*. On the contrary they should come and reside in these countries from other cities and countries (though they may be sacred) wherein they cannot enjoy religious freedom.

The arguments showing that an attack on such a city is forbidden have already been enumerated in the discussion of the 2nd doctrine, *i. e.*, wherever the prophet (may the peace of God be on him), saw a mosque or heard the Azan (the call to prayer) in a country with which he was at war, he never attacked that place or allowed an attack to be made on it. The reason for calling such a city or country a Dar-ul-Islam (or country of Islam) is that when a country becomes Dar-ul-Islam or under the subjection of Islam it remains so as long as all the religious exercises of the Mohammedan religion are not forbidden and stopped. If it were to be called Dar-ul-Harab or Dar-ul-Kufr (place of war or place of infidelity) it would mean that infidelity had overcome Islam, whereas the prophet has observed, as has been related by Bukhari and by Dar Qutni, that Islam is* mighty and infidelity cannot overcome it; and it is the opinion of the Hanafi learned men, as stated in the Fatáwa-i-Alamgiri and Fasuli Imadia, &c., that a Dar-ul-Islam cannot become Dar-ul-Harab as long as there exists even one performance of the religious acts of Islam; and the same is said by Imam Mawardi. His opinions will be mentioned hereafter at the end of the proofs of the 3rd proposition. In the second place a proof of that country being a Dar-ul-Islam or Dar-ul-Aman

* When Islam and infidelity come into contact Islam must prevail. Supposing a child whose mother is a Mohammedan and father an infidel dies, in order to give preference to Islam according to this tradition the child will be regarded as Mohammedan and will accordingly receive rights of sepulture.

(the place of safety), and of the propriety of coming to such a country even by leaving sacred places, is that, in the time of the prophet, the country of Abyssinia was in the possession of Christians. There was no sign or trace of Islam and although Mecca, the sacred residence of the prophet, was regarded as a holy and sacred place from ancient times, the infidels in that place used to give Mohammedans great trouble and oppose many improper obstacles to the performance of their religious duties. But the king of Abyssinia, though a Christian, did not like persecution and tyranny, and the prophet, knowing this fact, told his companions that the king was a very virtuous man, and that neither he himself oppressed anybody nor did he allow anybody to do so. If they went there, they were sure to be safe and would be released from the oppression of the infidels. In accordance with this order eleven persons from among companions of the great men of the Sahaba, among whom were Osman, his wife Roqeyah, the daughter of the prophet, Zobair Ibn-i-Masud, Abdur Rahman, son of Auf, and others, emigrated to Abyssinia.

This was the first Hijrat or emigration to Abyssinia. After them Jafar, son of Abi-Talib, and some other Sahabas went to Abyssinia, leaving Mecca, till at last 82 eminent persons of the Sahabas assembled there and lived there about 14 or 15 years, although in the ninth year of their flight the prophet had arrived at Medina and, having fully brought it under subjection and totally defeated the infidels of Mecca in the battles of Badr and Uhad, had thoroughly made Medina a Dar-ul-Islam, while Abyssinia was still the country of the Christians as before, because it was in the 6th year of the Hijrat of the prophet that he asked the king of Abyssinia to embrace the faith of Islam, and he embraced it five years before the Mohammedans left his country. All the abovementioned facts regarding the Hijrat are detailed fully in the books of Tradition, such as Sahi Bukhari, pp. 547 and 607, Qustalani, p. 223, vol. 6, the commentary on Bukhari, &c., and in the Tafsir-i-Maalum p. 390, and other commentaries. From the above-mentioned facts it is clearly proved that every city wherein the Mohammedans are freely allowed to perform their religious acts, is not a Dar-ul-Harab although it may be under the government of other nations, but a Dar-ul-Islam; or at least Dar-ul-Salam-wal-Aman; and Mohammedans may or must come to it. They are not allowed to leave it and reside in sacred and holy places (if there be no safety

in the latter). And it was for this reason that the eminent Sahabas Ibni-Omar and Aisha Siddiqah, after the conquest of Mecca, when there was safety everywhere, said that "Hijrat is no more necessary," and again "Hijrat was allowable when the Mohammedans were obliged to escape for the sake of the Faith, but to-day God has granted power to Islam; nobody can injure any Mohammadan on account of Islam; to-day the Mohammadans can worship God wherever they like." Qustalani has mentioned in the Sharah Bukhari in connection with this tradition that Imam Mawardi says: "When anybody can publicly perform his religious duties in the country of non-Muslims that country is Dar-ul-Islam." To live in such a country is even better than living in a Mohammadan country, because by living in the former, non-believers may be expected to be converted to Islam. All the above facts strengthen our argument that India is a Dar-ul-Islam or country of Islam.

Deductions from the Third Proposition.

(1.) It is evident that this country, though under the government of the Christians, is a Dar-ul-Islam; and no king, either of Arabia or Persia or Khorasan, or the Mahdi of Soudan, or the Sultan of Turkey himself, can wage holy war against it.

(2.) In spite of the above strong proofs from the Koran and the Traditions and the works of the learned, the suspicion of other nations that whenever Mohammedans get an opportunity they will be ready to fight the Government, is a mistake and a calumny. So long as the Mohammedans are acting according to the precepts of the Koran, the Traditions and the Fiqah, such a thing will never occur. Of course, if any one, like Maclean, who, in spite of being a Christian, fired a shot at Her Majesty the Empress, becomes insane and has no regard for Islam, nobody can be responsible for him.

The Fourth and Fifth Propositions.

4. The Mohammadans are allowed to make peace and stop fighting for as long as they may think proper, even with those against whom they had been ordered to wage religious war.

5. After they have made a peace, the Mohammedans are bound to fulfil its conditions, and in case of a breach of the terms of the treaty by the opposite party, they are not allowed to attack them without giving them previous

notice of having broken the treaty. The proof of such a peace or treaty being allowable is to be found in the following words of God the most high,—"And if they sue for peace (Chapter Anfal), do thou also incline thereto; and put thy confidence in God"; and the prophet acted on this throughout his life. The prophet made peace with many non-Muslims both after and before overcoming them. And such a peace or treaty is unanimously approved by Mohammedans. The prophet had made peace with the non-Muslims of Mecca in the battle of Hudaibia, and it was settled "that war was to be stopped for ten years so that men could be restored to safety within that period, and that the casket of war should be shut up; there should be neither hidden perfidy nor open treachery" (Abu Daud p. 25, vol. 2.) In this treaty the prophet accepted such severe terms from the people of Mecca that they apparently caused much contempt for Islam, as they implied the defeat of the Mohammedans. Among these conditions were the following: that the Mohammedans should not make the pilgrimage of the Kaba that year; that if any of the infidels came to the prophet to embrace Mohammedanism, he must be rejected; that if any Mohammedan went to Mecca discarding Islam the non-Muslims of Mecca would not reject him. At the time of entering this condition in the treaty, there was brought before the prophet a person named Abu-Jandal, the son of the envoy for peace on behalf of the non-Muslims of Mecca, dragged in chains, and on his being rejected, Omar and other Mohammedans were much depressed, and the prophet also asked the Agent of the non-believers to except him from the terms of the treaty, but on the Agent's not complying with it the prophet rejected him.

The prophet, after conquering Khaibar, wanted to turn out the Jews from that place, but they applied for peace on the condition that they should live there and give the prophet half of the produce of their lands. The prophet accepted it, and said that he would allow them to remain there on the same terms till the reign of Khalifah Omar, when they were exiled.

The prophet also made peace with Christians of Najan on the terms that they should pay annually a tax (Bukhari p. 315) to the Mohammedans of 2,000 pairs of dresses; also thirty suits of armour, thirty horses, thirty camels, and thirty weapons as a loan which would be returned to them by the Mohammedans after they had done with them. The

terms for their own benefit were that their churches should not be injured, their monks not turned out, and no interference should be made in the exercise of their religious duties, as long as they did nothing new and would not lend money, (Abu Daud p. 57, vol. 2), on interest.* From the above it is evident that making peace is allowable even with those non-believers with whom a religious war has been made (although in such a peace the Mohammadans may in some respects suffer some loss and the infidels may derive benefits in some respects) if it be considered proper and there be the certainty of the Mohammadans being benefited generally.

The Koran and the Traditions of the prophet contain numerous injunctions prohibiting a rebellion after a treaty of peace has been concluded. The injunction that " Do not kill those who join your allies," has already been quoted (see 17th Chap. Nisaa.)

Besides, the Almighty has exhorted you to keep the alliance with those with whom you made peace in Palestine so long as they abide by the treaty, and also " If your brethren ask your assistance in (the cause of) religion, assist them, but not against those with whom you have entered into a league." And again " Perform your covenant, as you will be held responsible for its performance " (Chap. Buni Israil). The prophet has observed: " He who does not fulfil his promise is not of my party, nor am I of his party." (Sahi Muslim). And also " Whoever kills a person of the party with whom a league or treaty has been concluded shall not smell the scent of Paradise, although the scent of Paradise can be smelt from a distance of 40 years' journey." (Bukhari p. 448). The prophet further says, " A flag will be hoisted on the day of judgment for those who break their league, and the non-performance of a league by every person will be proclaimed." (Bukhari p. 452, Muslim p. 83, vol. 3). Again—" Paradise is proscribed to a person who kills an unoffending person belonging to the party in league, (Abu Daud p. 24, vol. 2), and " I do not break any treaty " (Abu Daud p. 33, vol. 2). Umar, the second caliph, following the example of the

* Interest is unlawful according to the Mohammedan Law as being opposed to sympathy with our fellow-creatures and brothers in faith.

prophet advised his successors to remain true to allies and fight their enemies on their behalf.'*

If there be any fear of the other party breaking the treaty an attack on them is unlawful unless the treaty has been dissolved and a notice given to that effect. This is clear from the following commandment in the Koran: "If thou fearest treachery on the part of any people give them notice of the dissolution of treaty, for God loveth not the treacherous". (Chap. Anfal.) The prophet also has given a similar direction. Sulaim-bin-Amir relates that a treaty had been concluded between Amir Muavia and the Romans, and that when the term of the treaty was about to expire the Amir determined to attack the Romans, but a man on an Arabian or Turkish horse came to him and exclaimed "Allah Akbar! You should be faithful, not treacherous." The Amir on looking at the man found that he was Amir bin Absa, one of the companions of the prophet, and asked him why he had come. The latter replied that he had heard the prophet say that no one who had entered into a treaty with any people should break that treaty till the term for which it had been made had expired, or till notice had been given of the dissolution of the treaty. Amir Muavia thereupon gave up the idea of attack and retreated.

The inferences that can be drawn from the 4th and 5th propositions will be enumerated with those of the 6th and 7th propositions.

The Sixth and Seventh Propositions.

6. When non-believers (even if they be tyrants and prevent Mohammedans from the exercise of their religious duties and be therefore liable to Jihad) take possession of Mohammedan cities and countries by conquest they become masters of those cities and countries.

7. When a man takes up his residence in a city ruled by infidels as a peaceful subject, he is as much bound to keep the peace as those who have openly tendered their allegiance. It is as unlawful for him to rebel against infidels

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* *Note.*—This order of the second caliph is not confined to non-believers, but also applies to Mohammedans who fight with those with whom a treaty has been concluded by the Mohammedans. The verse quoted on page 14 also supports this view. We trust Dr. Hunter will read this note and satisfy himself as to whether the above remarks contain an answer to his question "Learned men and expounders of the law of Islam, what is your opinion in the following matter? In case of a Mohammedan ruler attacking India while in the possession of the English, is it the duty of the Mohammedans of that country to renounce the *aman* of the English and render help to the invader?"

or to interfere with their life or property as it is for those who have actually and openly tendered their submission. The proof why the non-believers become masters of a city or country by virtue of their conquest is to be found in the fact that the prophet did not interfere with the encroachments made by non-believers on the prophet's property of which they had become possessed. Nor did he declare them as null and void after regaining possession from them. The Sahih Bokhari (p. 261) contains a tradition to the effect that Usama asked the prophet what house he would put up in at Mecca at the time of the pilgrimage. "What!" the prophet replied, "has Aqeel left any house of ours" (*i. e.*, he had taken possession of all the houses). One of the reasons why Aqeel had succeeded to these houses is stated in this tradition, *viz.*, that the heirs of Abu Talib were Aqeel and Talib and not Ali and Jafar, because at the time of Abu Talib's death Aqeel and Talib were infidels while Ali and Jafar had embraced Islam. (Bukhari p. 261.) This fact, however, does not afford sufficient ground for Aqeel's succession to other houses (one of which belonged to the prophet in whose lifetime Aqeel could not be the heir) than those of Abu Talib and consequently the reason assigned in this tradition is confined to the possession by Aqeel of the house belonging to Abu Talib, and his possession of the house belonging to the prophet can be justified on the same ground as we have stated, *viz*, by virtue of his conquest and possession, which the prophet held as just. Qustalani in his commentary, (p. 175, vol. 3) on the Hadis (tradition) in question remarks that "the houses referred to in the tradition originally belonged to Hashim, then they descended to his son Abdul Mutlab, who distributed them among his own descendants, and then the prophet obtained the right of his father Abdulla. It was in this very house that the prophet was born as related by Faqihi. The remark of the prophet that Aqeel had left him no house clearly shows that he was the owner of the house in question, and that the ownership and possession of it by Aqeel can be accounted for by the fact that he took possession of it just as Abu Sufian took possession of the houses of the Muhajireens (or migrators), or perhaps there may be some other reason.

In my opinion the hesitation felt by Qustalani does not in any way affect my contention, *viz.*, that Aqeel's ownership of the house is due not to his having inherited it, but to his having got possession of it by conquest. If there were any other reason

it would not matter. Again, Qustalani states (on the authority of Daoodi and others) that the houses of the Muhajireens (migrators) were sold by their relatives, and that the prophet in order to please the newly made converts did not interfere with the encroachments they had made previous to their conversion, *i. e.*, the prophet did not declare their possession as null and void even after he had conquered Mecca, as in that case he would have insisted on restoring the *status quo.*

The theologians are not agreed as to whether non-Muslims become owners by virtue of their ascendency. The Shafai and another sect of Mohammadans hold that non-believers cannot become owners of the property of Mohammadans merely by virtue of their conquest, and therefore all property thus acquired by them should be restored to the Mohammadans on their regaining ascendancy. Ali, Zuhri, Amr-bin-Dinar and Hasan Basri observe that the non-believers become owners of such property, and that it becomes the property of the Mohammadans who loot them after subduing them. Amar bin Salman, son of Rabia, Ata, Lais, Imam Malik, Imam Ahmad, &c., hold that such property becomes the property of the infidels, and that in the event of Mohammedans regaining possession the original owner will get it on payment of its value if it has been disposed of, though it may be given to him as a matter of favor before it has been disposed of." (Nail-ul-Autar, vol. 7, p. 191.) This also supports the opinion we have already expressed. The Hidaya (p. 561, vol. I,) a work of great authority among the Hanfis, states that if non-believers by virtue of their conquest gain possession of Mohammedan property they become owners of the same, provided they carry it to the place where they reside.

Imam Shafi is opposed to this doctrine. He says that the ascendency of infidels being unlawful in itself cannot render their ownership lawful. The Hanfis, however, hold that the encroachment of infidels over the property of Mohammedans is unlawful only so long as Mohammedans hold possession of it, but the moment their possession is removed the infidels become owners of their property which becomes *mubah* or common property. They hold that every body is entitled to reap benefit from everything inasmuch as the Koran says: "God has created for you all everything that is on earth." Possession is the means by which particular persons are enabled to enjon benefit from particular things. The Almighty has also enjoined "whosoever holds

possession of a thing can make use of that thing; but that when his possession is removed, such property becomes the property of all "Therefore the possession of such property is equivalent to acquiring possession over lawful property and leads to ownership; just as the possession by Mohammedans of the property of non-Mohammedans is lawful and leads to the former becoming owners of the property of the latter."

Some Ulama, (learned men) refer to a tradition contained in the Sahih Muslim, (Vol. 2, page 45) in support of Imam Shafi. The tradition is to the effect that once upon a time, a woman was taken prisoner by the infidels who also got hold of a she-camel (named Azba) belonging to the prophet. The woman was imprisoned by the infidels who used to bring their camels in front of their houses (or camps) at night. The woman one night succeeded in making good her escape and came to where the camels were. Each camel made a noise on her approaching till she reached Azba which being tame made no noise. She accordingly rode Azba. The non-believers on hearing of her escape pursued her but could not overtake her. The woman made a vow to sacrifice the she-camel in the name of God, if she succeeded in making good her escape from the infidels. The prophet on hearing this story remarked that the woman committed a great mistake by making a vow of sacrificing that she-camel, as it is not right to fulfil a vow that is unlawful and to make an offering of a thing that does not belong to the person making the vow. The reason why they rely on this tradition is, they say, that the last sentence applies to the she-camel. If the infidels had become owners of the she-camel by virtue of their getting hold of it, the woman too would have become owner of it, and in that case the prophet would not have declared that it is not right for a person to make an offering of anything that does not belong to him.

In answer to this, Aini Hanfi remarks in the Sharah-i-Hidaya that the infidels had not yet taken the she-camel to their country and that it fell into the hands of the woman while they were on their way home, and affirms that infidels become owners of Mohammedan property only when they take it to their country.

The author then refers to a passage in the Koran in which the Muhájireens (migrators) are referred to as beggars deserving of charity and observes "that as a beggar is one who owns no property, the Mohajireens would not have been

spoken of as beggars if the infidels had not become owners of their property."

Similarly Sheikh Ibnul Humam observes in the Fatehul Qadír (margin to the Hidaya) that a person cannot be called a Faqir if he is not in possession of his property on account of his being away from such property. Such a person is called Ibn-us-Sabil or traveller. As regards the comments made regarding the tradition about the she-camel (Azba) he states that the Rewait in the Tuhavi that the infidels at every stage brought their camels in the plain in front of their camp shows that they had not yet reached their homes, but were on their way. I think those who do not agree with the above-mentioned opinions of the Ulama, should prove by more reliable authority that the infidels had reached their homes with the camels and that the place where they kept the camels was their home and place of residence.

It may also be urged as regards this tradition that it does not imply that the possession of any thing obtained by conquest does not constitute lawful ownership. The remark contained in this tradition, *viz.*, that the vow of anything that is not owned by the person making the vow, is not binding does not clearly or implicitly show that the remark applied to the case of the woman alone; nor does it mean that the woman did not become owner of the she-camel by reason of her having got hold of it. On the other hand, it stands to reason, that the tradition contains a new direction as regards vows and that only one portion of the Hadis, (*viz.*, that the fulfilling of an unlawful vow is not lawful) applied to the case of the woman, *i. e.*, that as the fact of her making a vow was unlawful she was not bound to make the vow. That the action of the woman in making a vow was unlawful is also proved from the remark contained in the tradition, *viz.*, that she made a great mistake in thus treating the she-camel.

And if the tradition of the prophet that the fulfilment of a vow is not lawful in respect of property belonging to others be taken to apply to the woman, then it may be due to the fact that she had not obtained complete hold of her at the time she made the vow and that up to that time it was possible that the she-camel might be re-captured by her owners the infidels, who went in pursuit of it, although finding it impossible to overtake the she-camel they retreated. Besides, it is possible that the prophet might have taken the camel for himself not because it formerly

belonged to him, but because it was booty obtained by Mohammedans and because he as a prophet had a right to it.

This was actually the case, and possibly the prophet took the she-camel in question by virtue of his right (istifa) as the prophet. In the face of all these possibilities it was anything but right for the woman to regard the she-camel as her property and to make a vow to sacrifice it.

The learned men of the Shafia sect and those who hold similar opinions should first satisfy themselves on all these points before they can support their opinions by the tradition.

It is clear from the remarks made above that according to Imams, Abu Hanifa, Malik and Ahmad-bin-Hambal, the non-Mohammedans become owners of a thing by force and that their opinion is supported by the Koran and the tradition contained in the Sahih Bokhari, and that the Shafia alone hold a different opinion which opinion however is not supported by any cogent reason. Besides, there is probably no Mohammedan in India who follows the Shafia sect. On the whole according to the religious doctrines of the Indian Mohammedans a non-Moslim becomes owner of a thing by reason of his gaining possession of it and they have no reason to disagree with our Sixth Proposition.

That it is unlawful to rebel in a non-Mohammedan country after taking up residence therein as peaceful subjects is clear from the tradition contained in Sahih Bokhari, p. 379, and Abudaud, (p. 25 Vol. II.) which is to the effect that Moghira-bin-Shubah, one of the companions, went to Egypt with his co-religionists before he became a Mohammedan. The King of Egypt received all with the exception of Mugirah with great kindness. This roused the jealousy of Mugirah who was not of the same tribe as his companions. On their return Mugirah finding his companions asleep and drunk treacherously put them to death and appropriating every thing that belonged to them returned to the prophet and expressed his willingness to embrace Islam. The prophet expressed his satisfaction at his conversion, but said that he did not want to take the booty he had brought with him as he had come by it by treachery. Qustalani in his (Sharah-i-Bukhari p. 35, Vol. 4.) states the reason why this booty was Mal-i-Ghadr (property obtained by treachery) is that the property of infidels against whom a war may be lawfully

waged is lawful when it comes into the hands of Mohammedans after their supremacy is established, but that it is unlawful to deprive them of their property in time of peace. When a man goes in company with another man he, of course, by so doing implies a promise not to interfere with his life and property and in fact makes a promise of fidelity to him. To kill a companion and loot him after all this is certainly treachery and treachery even towards infidels is unlawful.

If, according to the tradition under notice the mere fact of a man accompanying another man constitutes a promise of fidelity to break which is treachery, there is no reason why the fact of people taking their residence in the country of non-believers as peaceful subjects and living there in the enjoyment of all the blessings of peace and liberty be not regarded as equivalent to a promise of allegiance and the breaking of such promise as treachery.

Deductions from the Fourth, Fifth, Sixth and Seventh Propositions.

Before stating the inferences that can be drawn from the above-mentioned four propositions it is necessary to refer to two important facts. In the first place, the supremacy of the British is fully established over this country and there is no great rival Government to dispute their possession of the country. Secondly, the Mohammedans residing in this country are of three kinds :—1. The chiefs of native states such as the Nawab of Taunk, the Begum of Bhopal, the Nizam of Hyderabad. 2. The Mohammedans subject to these chiefs. 3. The Mohammedans subject to the British Government who are in no way subject to any of the Mohammedan Chiefs.

All these three classes of Mohammedans have entered into a treaty of friendship with the British Government.

The first class of Mohammedans have actually entered into an alliance with the Government and have made a promise in writing not only not to oppose the Government but to assist it and this is exactly what they have so far done. The submission of the second class to the British Government is included in the alliances entered into by their chiefs.

This is clear from a tradition in the Sahih Bukhari which states that all Mohammedans are equally responsible for the fulfilment of a promise (Sahih Bukhari, p. 450). If a Mohammedan of the lowest position makes a promise not to fight and kill, the rest are bound to respect the promise

made by him, to say nothing of a promise made by chiefs of native states. As regards the third class some of these have tendered their allegiance expressly in writing, *i. e.*, those who publicly and privately express themselves as loyal subject of the Government (by means of their writing and speeches) and are ready to serve and assist it. Among these are included the Ahl-i-Hadis of the Punjab who expressed themselves as loyal to the Government by means of a memorial to the then Lieutenant Governor Sir Henry Davies, who issued a circular in 1876 admitting them to be loyal. The promise of the rest of the Mohammedans who have not made any express promise is implied, as they have been living under the protection of the British Government as peaceful subjects and are enjoying the blessings of peace and liberty under it. They neither declare themselves as opposed to the Government nor live secretly in the manner of spies in a Dar-ul-Harb. On the contrary, their attitude towards the British shows their friendship to be unlike that of Mugirah-bin-Shuba to whom reference has already been made on p. 20. So much for facts: we now return to the inferences that are to be drawn from the propositions under notice.

One very important conclusion that can be clearly drawn from these propositions and the arguments brought forward in their support is that all the three classes of Mohammedans, so long as they abide by their promise (whether the promise be express or implied) cannot, while they are living under protection or even after leaving the protection and giving their protectors due notice of their hostility, be justified in waging war against them or assist their enemies even if they be Mohammedans. Indeed such an act on their part would be treacherous and unlawful.

Ignorant Mohammedans should always keep this fact in view and refrain from regarding hostility to non-Mohammedans as lawful Jihad merely on account of difference of religion, because war, whether religious or political, against those with whom a promise has been made is on no account lawful Jihad but is equivalent to a rebellion. The Mohammedans who took part in the mutiny of 1857 committed a great sin according to the Koran and the traditions of the Prophet and were mutineers and rebels. Most of these were common people, and the few who passed as Ulama were either ignorant of Mohammedan theology, *i.e.*, the Koran and the traditions, or devoid of common sense. No really learned man either took part in the mutiny or willingly signed

the Fatwa declaring it to be a lawful Jihad. This has already been referred to in full detail in the Ishaat-us-Sunnah No. 1, Vol. 8. It was for this reason that Maulvi Mohammed Ismail of Delhi, who was well versed in the Koran and the traditions did not fight the English (under whose protection he was living) and the Native States. On the contrary, he went out of British territory to fight the Sikhs who prevented the Mohammedans from performing their religious duties and did not even allow them to say the Azán or call to prayer. This has also been referred to in Syad Ahmad Khan's reply to Dr. Hunter and quoted in the Ishaat-us-Sunnah No. 10, Vol. 8.

The second result that can be drawn from these doctrines and arguments is that, notwithstanding the fact that it is lawful to make alliances with those against whom Jihad is lawful, it is unlawful to fight against allies; and that by virtue of their supremacy non-Mohammedans become masters of every thing belonging to the Mohammedans; and that to fight non-Mohammedans in whose country Mohammedans live as peaceful subjects is unlawful and treacherous. Those well-wishers of the Government who labour under the misapprehension that the Mohammedans, and, especially those who strictly follow Islam will be the first to take up arms against the British Government as soon as they find an opportunity are greatly mistaken. It is to be hoped that if these so-called well-wishers of the Government hold such views on account of their ignorance of the above-mentioned doctrines they will change their opinions after the perusal of these doctrines. On the contrary, if they hold such opinions notwithstanding their knowledge of these doctrines they should remember that by so doing they injure not merely the Mohammedan subjects of the Queen, but also the British Government, because so long as the Government entertains the least suspicion about the loyalty of the Mohammedans it will not treat them with that liberality to which, as loyal subjects of the Government, they are entitled. Nor will they, under these circumstances, be able to perform their duty to the state with alacrity and enthusiasm, to say nothing of the danger likely to result from such a state of things to the stability of the Government. Sadi very truly remarks that the people are like the roots and the king a tree; and the tree cannot stand unless the roots are strong.

Eighth, Ninth and Tenth Propositions.

(8). If non-Mohammedans interfere in the performance of the religious duties of the Mohammedans and if their country be a Dar-ul-Harb and even when no covenant has been entered into with them by the Mohammedans, nay even if the Mohammedans do not live in peace in their country, the Mohammedans are justified in waging a religious war under such circumstances only when they are in a position to uphold the honor of Islam and when their success should be more than assured.

(9). Under these circumstances among other conditions justifying a lawful Jihad is the presence of an Imam or Caliph.

(10.) It is also possible that the Mohammedans should be without an Imam and that the absence of an Imam does not in any way imply that the Mohammedans commit a sin by remaining without an Imam. That the Mohammedans are not justified in making a Jihad unless they are strong enough to do so is clear from the fact that the Koran excuses the fighting of one man against a thousand and says that "one hundred Mohammedans can overcome two hundred non-Muslims," *i. e.*, one hundred men should fight against two hundred, and again "supply arrows and horses for the warriors and alarm the enemies of God and of yourself (Ch. Anfal)."

According to the Fatawai Alamgiri, a work of great authority among the Hanfis, Jihad is justified under two conditions, *viz.*, First, when the enemy who is not under a covenant with the Mohammedans refuses to submit, and secondly when the Mohammedans are sure of their success. When, however, they are not so strong as to hope for success their entering on a Jihad is equivalent to putting their lives in danger of death which is prohibited by the Koran. The Mohit Sarkhasi also contains similar doctrines. According to the Kifaya, Jihad is lawful only when the persons making it are well off and strong enough to defend themselves from their enemies; otherwise Jihad is not lawful. The Mustakhlas Sharah-i-Kanz also contains doctrines to the same effect. That the presence of an Imam is essential for a Jihad, is clear from a tradition of the prophet that "an Imam is a shield; fight under his protection and make him your safeguard," which has been quoted by Bukhari and Muslim, (Bukhari, p. 415, Muslim, p. 126), Imam Nawawi in his

commentary on the above tradition states that an Imam is like a screen for the Mohammedans to save them from all trouble, and that fighting under him means fighting against infidels, rebels and tyrants under his lead (Sharah Muslim, p. 126,). Mulla Ali Qári in his work called the *Mirqát* also commenting on the tradition under notice observes that an Imam means the caliph for the time-being or the caliph's vicegerent who is like a shield because he always leads the people in the battle-field. It is by his assistance and power that the people fight. Indeed he should be called a *sipar* (or shield) in every case, as he is the protector of the Mohammedans in every respect. Sheikh Abdul Haq also makes similar remarks in his commentary on the Mishkat, while Maulvi Mohammed Ismail, leader of the Ahl i-Hadis, in his treatise on the Mansab-i-Imamat observes as follows :—

"The qualifications of the Caliph among others are that he should give orders in religious matters such as Juma or Eed, prayers or waging Jihad and awarding punishments because the prophet says that "an Imám is a shield, &c." The quotations which follow hereafter will also tend to support the above view and show that Jihád is the work of an Imám alone.

Now the question arises what is meant by the Imám whose presence is essential for waging a Jihád according to the Hadis in question? What qualifications should he possess? and is there any Imám in any part of the world who fulfils all these conditions or who possesses these qualifications? It may be observed in reply to this question that according to the works on Mohammedan Law there are two kinds of Imáms, *viz.*, the minor Imám or leader in prayers, the major Imám or the Caliph and spiritual leader of the Mohammedans for the time-being. The Imám referred to in the tradition in question is the latter kind of Imám, as according to the tradition his duty is to lead the Mohammedans in battle and defend them from their enemies which forms no part of the duties of the minor Imám or leader in prayers. According to Mohammedan theologians the major Imám must possess many qualifications which have for a long time past been conspicuous by their absence.

It is stated in the Dur-i-Mukhtar that there are two kinds of Imáms, *viz.*, minor and major. By the latter is meant one who has full control over the people. This point has been discussed thoroughly in works on the Aqaids (or

articles of faith); such an Imám must satisfy the following conditions, *i. e.*, he should be a Mohammedan, he must not be a slave; he should be a man not a woman or child; he should be a wise and an able man and belong to the tribe of Qoreish. It is not essential that he should be a Hashimite or a descendant of Ali, and Masum (infallible). The minor Imámship means the connection of the person leading in prayers with his followers (Dur-i-Mukhtar, p. 70), Mulla Ali Qari in his Sharah Fiqah Akbar states that the presence of an Imám who should enforce Mohammedan Law, defend their frontiers, maintain a Mohammedan army and realise the Zakat and other charities from them, defend them from their enemies, protect them from thieves and dacoits and perform other duties which common people cannot perform, is essential. Again it is necessary for an Imám to be a Qoreish, as the prophet has said that "the Imáms must be from among the Qoreish." This is a well-known tradition and the learned are unanimous that the Imám referred to in it is not the leader in prayers, and accordingly it is admitted that by Imám is meant the Caliph for the time-being. It is not necessary that he should be a Hashimite or a descendant of Ali or a Masum. He must be fit to be invested with full powers, *i. e.*, he should be a Mohammedan, he should not be a slave but must be a man and not a woman or child, but a wise and prudent man capable by virtue of his learning, bravery and sense of justice of enforcing the law and protecting the weak against the strong (Sharah Fiqa Akhbar, p. 116—117). It is stated in the Sharah-i-Mawaqif (p. 732) that the past majority of the learned hold that an Imám must be possessed of the following qualifications:—

"In the first place he should be a Mujtahid as regards the doctrines of Mohammedan religion, so that he may be able to uphold the religion and defend the Mohammedan articles of faith by his reasonings and remove any suspicision that they may entertain regarding the Aqaids (articles of faith) of Islam. He should also be qualified to give Fatwás regarding the questions of the day. The defending of the Aqaids of Islam and the deciding of quarrels is one of the most important duties of an Imám and this he cannot do unless he is also a Mujtahid. Secondly, the Imám should be well versed in the art of Government and able to keep peace and carry on war and defend the country and in short be able to carry on its administration. Thirdly, he should be a man of courage

so as to be able to defend a Mohammedan country from the attacks of their enemies and defend the Mohammedans who follow his lead. It is related that on one occasion the prophet, when his followers had fled and he was left alone, proudly exclaimed, "I am the prophet, there is nothing untrue in it. I am the son of Abdul Mutlib." Besides, the Imám must be able to award lawful punishments to criminals, such as the beheading of criminals and tyrants, which duty none but a strong man can be expected to perform. Some learned men are of opinion that all the three qualifications mentioned are not essential for an Imám, as all of these qualifications are not to be found in any one person, and that if the appointment of an Imám not possessed of these qualifications be regarded as lawful, these conditions would cease to be of any importance, while to make the possession of all these qualifications essential for the office of Imám is to make essential what appears to be improbable. They therefore consider the following conditions, instead of those already mentioned, necessary for an Imám:

(1) The Imám should be virtuous, because a tyrant would waste the public revenue on unlawful objects and would not respect the rights of the people. (2) He should be a wise man well versed in religious and political matters. (3) He should have attained the age of majority because a minor is not possessed of discretion. (4) He must not be a woman as women are generally not wise. (5) He must be a free man, as a slave is engaged in the service of his master and cannot perform the duties of the caliphate. These (conditions eight, including the first three,) or the last five are unanimously held to be esssential for an Imám. The author hints that it is not justifiable to disregard the necessity of the first three conditions in an Imám.

There are some conditions appertaining to the office of caliph on which the Mohammedans are not at one with each other. The first of these conditions is that the Imám should be of the tribe of Qoreish. This condition is considered essential by the Ash'aris, but the Khárjies and some Motazlás deny that it is necessary for an Imám to be of that tribe. We have, however, in support of our view the tradition of the prophet, "that the Imám should be of the Qoreish tribe." The companions of the prophet also acted according to this tradition. On the day of Saqifa,* when

* Saqifa is the place where the election of the caliph took place.

the Ansars raised a quarrel about the office of Imam, Abu Bakr referred to this Hadis as his authority which was admitted by all unanimously. This fact shows that it is essential for an Imam to be a Qoreish. Those who think that the Imam need not necessarily be of the Qoreish tribe base their opinion on a tradition in which the prophet enjoined obedience to a ruler even if he were an Abyssinian slave. We, however, assert in reply to this objection that the last-named tradition refers to persons appointed by an Imam of the Qoreish tribe to govern a place or command an army. The tradition in question must be interpreted in the manner we do, because otherwise it would be impossible to reconcile it with those traditions which confine the office of Imam to the Qoreish. Indeed, it may be said that the tradition about a ruler being slave in an exaggeration, inasmuch as a slave cannot be an Imam; the object of the prophet being to enforce obedience to the ruler for the time-being.

The second condition on which a difference of opinion exists is that an Imam must be a Hashimite. The Shiahs consider it an essential condition. The third condition is that he should be well versed in Mohammedan theology. The fourth condition which the Shiahs regard as essential is that an Imam should possess the power of working miracles in support of his claims to the office of Imam.

The groundlessness of these conditions will appear from the fact that Abu Bakr Siddiq whose claims to the caliphate will be proved by arguments hereafter did not possess these qualifications. The fifth condition which the Imamyas and Ismailyas hold as essential is that an Imam should be Másúm, but the groundlessness of this condition is also clear from the fact that Abu Bakr whose claims to the office of Imam are proved by several arguments was not a Masum.

In the Sharah-i-Maqasid these conditions are admitted as being necessary for an Imam, but an objection has been raised that Imams possessing all these qualifications have ceased to exist ever since the time of the Abbasides and thus if Mohammedans appointed Imams who did not fulfil these requirements they committed sin. Again it is remarked in reply that the Mohammedans could only be guilty of such a charge if they had purposely failed to appoint an Imam while it was in their power to do so. But since it is not in their power to appoint an Imam they cannot be held guilty of the charge. A learned man of the Ahl-i-

Hadis sect named Abu Hafs Mohammed *bin* Abi Ahmad-ul-Madini Al Hossaini has recently compiled a work entitled the Husan-ul-Masai Ila Nusah-il-Rayyat-walrai on the Imam and his subjects. The work in question was published in Bhopal or Agra in the year 1301 A. H. or 1884 A. D. and gives a detailed proof (based on the Koran and the traditions of the prophet) of the qualifications of an Imam. Similarly other Mutakalims Muhaddises of the past and present times have stated the conditions and qualifications appertaining to the office of an Imam and supported them by logical and theological arguments.

In works on the traditions special stress has been laid on the condition that an Imam must be of the tribe of Qoreish. We also think it advisable to quote a few traditions and the opinions of Muhaddises in support of this view. The prophet as Abu Huraira narrates has said, "the Imams shall be from among the Qoreish, (Ahmed, Tibrani and Abuyala), Abu Huraira also narrate (according to Utba-bin-Idan) that the prophet said that "the office of Imam, *i. e.*, the caliphate is for the Qoreish (Imam Ahmed)." According to Ali the prophet said, "the Amirs are or should be from among the Qoreish," Tarikh-ul-Kulafa. Again according to Abu Huraira the prophet said that "in this respect, *i. e.*, the caliphate, people will be subject to the Qoreish," while according to Abdullah he said that "the caliphate will be for the Qoreish so long as there remain two persons in the world, (Muslim, p. 119, Bukhari, p. 1057,") *i. e.*, the Qoreish will be entitled to the caliphate. According to Moaviya also the prophet said that "the caliphate will be for the Qoreish and whosoever is hostile to them or fights them will be overcome so long as they uphold the religion." (Bukhari, p. 1057.)

Imam Nawawi in his commentary on the Sahih Muslim remarks that these and similar traditions prove that the caliphate is exclusively reserved for the Qoreish and that no one else can aspire to that office. This was unanimously admitted in the time of the Sahaba or thereafter and whoever of the Khárji and Motazla sects holds a different opinion is wrong according to the Sahabas, their followers and the traditions. Qazi Ayaz remarks that it is an article of faith with all learned men that an Imam must be of the Qoreish tribe as on the day of Saqifa when Abu Bakr referred to this fact nobody contradicted him. The Qazi states that it is one of those doctrines on which all are agreed and nobody in past or present

time has ever raised any question about it. He considers that the opinion of Nizam and other Kharjies of his persuasion that a non-Qoreish can also be an Imam is not reliable nor should any notice be taken of the impudence of Zirar-bin-Amr who says that a non-Qoreish Imam is preferable to one of that tribe, as it is easy to deprive him of the office of Imam in case he should do something deserving dismissal." This saying of Qazi is nonsense. According to the Umdat-ul-Qari and Fateh-ul-Bári commentaries on the Sahih Bokhari, Imam Qurtabi was of opinion that the remark of the prophet that the caliphate will be confined to the Qoreish is an order of Shara which means that no one but a Qoreish can become a lawful caliph so long as a single person of that tribe remains. The reason why he holds such an opinion is that though the wording of the tradition show it to be a prophecy, in reality it implies an order.

Our readers will see from the quotations given above what is meant by an Imam whose presence is an essential element for a Jihad and the qualifications he must possess. They will also find that an Imam possessing these qualifications is not only not to be found at present, but has not been found for a long time past. Nor is there any probability of one being found in the future to judge from existing circumstances.

That the Mohammedans can lawfully remain without an Imam is clear from the tradition quoted by Imam Bokhari under the heading "when there is no Mohammedan following under the Imam," from Huzaifa, who says "while others asked the prophet about good things I questioned him about bad ones lest they should fall on me. I said to the prophet that we were in times of ignorance before we received the good tiding about Islam. "Was any evil to come after this?" The prophet replied, "yes." I then asked "will it be followed by good?" He said" yes, but it will not be unmixed." I asked what he meant? He said. A nation will come into existence which will follow other ways than mine. You will find good things and bad things in them." I then asked "will any evil come after this?" He replied "yes; there will be a people who will call you to the gates of hell and whoever will follow them will be thrown into hell by them." I asked the prophet to give an account of that people. He said "they will come from amongst us, will follow the same creed." I then asked the prophet as to what I should do if that happened

to me in my lifetime. He told me to join the Imam and the Mohammedans following under him. Then I said if there be no Imam and his following"—then said the prophet, "keep aloof from all sections even if thou hast nothing but the root of a tree to eat, and live on it till you die." (Bukhari, p. 1049, Muslim, vol. 2, p. 127).

Deductions from the Eighth, Ninth, and Tenth Propositions.

(1). Some ignorant Mohammedans without having a Jamiat, &c., assemble in bodies of 100 or 50 men and at times only 10, 20 or even fewer and attack non-believers ten times as numerous as themselves and get defeated and killed on account of their numerical inferiority. This is no Jihad, but disturbance, even though their action may possess all other elements which constitute a Jihad as stated above.

Some ignorant people on the frontier generally take a seer of *ata* (flour) and leave home in order to become Ghází or Shahíd (martyr) and kill a civil or military officer and are then hanged. This, of course, is no Jihad but disturbance. It is the height of ignorance to die an unnatural death and to regard such disturbances as Jihad.

(2). Lawful Jihad has become a matter of history ever since the lawful caliph ceased to exist; and accordingly the wars waged by non-Qoreish Mohammedan Kings under the name of Jihad cannot be regarded in the light of true Jihad. The fact that such wars were not Jihad is unanimously admitted by theologians and traditionists. The reason given by them is different, *viz*, that the object of these wars was different from that of Jihad, *vide* Tarikh-ul-Khulafá; Tarikh-i-Ajáib-ul-Maqdur; Risala Mansab-i-Imamat by M. Mohammed Ismail of Delhi; the Badr-i-Talia of Qazi Mohammed-bin-Ali Shaukani and other works.

Another inference which can be derived from the two results in question is that at the present moment also there are no circumstances justifying a Jihad, inasmuch as the Mohammedans have neither an Imam nor are they strong enough to overcome their enemies.

When we read in newspapers that the Sultan of Turkey or the Amir of Afghanistan or any other Mohammedan State has declared Jihad we cannot help being surprised and refuse to believe such statements, inasmuch as at the present moment the Mohammedans have neither an Imam to fight under nor are they strong or numerous enough to hope for success over their enemies.

(3). The present condition of the Mohammedans is quite satisfactory. At the present moment when they have neither an Imam nor the means to prosecute a Jihad there need be no fear of their making a Jihád and especially of the Indian Mohammedans who enjoy religious liberty to the fullest extent under the British Government. The Mohammedans need not be afraid of being unable to perform their religious functions by not having an Imam, nor need their rulers be afraid of any attempt on their part to secure an Imam or the means of Jihad, because their religion allows of their remaining without an Imam. Such fears might be reasonably entertained if it were the real duty of Mohammedans to wage Jihad and the act of their remaining without an Imam were derogatory to their religion. Since, however, both of these conditions have been proved to be unnecessary, no such fear need be entertained by either the Mohammedans or the Government, these are the doctrines of Islam and the views on the subject of Jihad from a scientific stand-point. We hope to be able to show in the second part of this treatise how the Mohammedans and the Prophet and his companions carried these doctrines into effect, and how in the wars waged by them they acted on these principles.

We have quoted in this part of the treatise the ten doctrines, and the two objects with which we undertook the completion of the treatise have been fully attained. They will serve to enlighten ignorant Mohammedans on the subject and convince them that Jihad is not lawful against every non-Muslim merely because he is not a Mohammedan, without reference to the conditions which govern Jihad and especially against those under whose protection they live. On the other hand, it will serve to convince those non-Mohammedans who take an unprejudiced view of the question that it is not the duty of the true followers of Islam to fight non-Mohammedans as such; to force them to embrace Islam or to spread their religion by the sword or to rebel against a non-Mohammedan Government. We must respectfully ask those non-Mohammedans who hold such opinions about Islam to read this part of the treatise carefully and let us know if they find its arguments convincing and also inform us of any short-coming they may happen to find in the treatise.